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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Memorandum

To: Executive Secretary
Department of State

From: Assistant Secretary--Energy and Minerals

----- Interdepartmental Group Memorandum No. 8 and Presidential
Options Paper

Detailed comments on the two subject papers are attached for your consideration.

The transmittal memorandum of November 11 requests the position of the Department on the two options presented. In light of the discussion in Memorandum No. 8 on implementation of Option II, and numerous discussions at staff level meetings, this Department must oppose Option II. At the same time, however, Option I suffers from deficiencies.

The Department would favor instead a third option similar to that of the Presidential Option II with changes including the addition of the words "to obtain changes" vice "to negotiate changes." The implementation plans should clearly state that the United States required the satisfaction of the five objectives and that the guidelines of Memorandum No. 8 must all be met. This position would have to be made clear at the time of attendance at the Eleventh Session of UNCLOS III in March, 1982, as well as in bilateral and multilateral intersessional meetings prior to that session.

While this may be viewed by some as a "confrontational" approach, the Department considers that the time is long past for the United States to only "seek further improvements" in the seabed mining issues, while avoiding any risk of unraveling the military navigation issues. Such a position only echoes the rather amorphous negotiating posture of prior years which has been unsuccessful in satisfying overall U.S. objectives in Law of the Sea.

Atchmts

Not referred to DOI. Waiver applies.

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SECRET: Derivative from State Memorandum dtd 11 November 1981

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17 November 1981

Attachment I: Commentary on Draft Memorandum to the President,
Dated Nov. 10, 1981

1. Page 3, sub-paragraph (4), line 2: to read: ". . .the only realistic, although remote, possibility"

comment: in the most recent discussions, it was agreed to substitute language here, in lieu of the above suggested change. While there is a possibility, the language as drafted conveys more sense of probability than later sections indicate.

, lines 5, 6: to read: ". . . identified which both could prevent . . . provisions and offer an opportunity to"

comment: this makes clear the fact that this is the only approach which has a chance of doing both, not that it is the only approach to achieve these separately not under the treaty or otherwise.

2. Page 4, sub-paragraph (1), line 3: to read: ". . . there is some opportunity"

comment: As there has been no solid indication yet as to the reality of the improvements cataloged in the rest of the paragraph -- or even drafting of language which might accomplish these laudable aims, the opportunity must be qualified.

3. Page 4, Option II Statement: to read: ". . .Conference to obtain changes . . ."

comment: The option must state that the reason for participation in the Conference is to obtain the changes, not merely to negotiate regarding these changes. A similar change in the language of Option II on page 6 is needed to conform.

4. Page 6,7: First argument in favor of Option II: a conforming change to coincide with the change (1) above

5. Page 7: sixth "tick": delete.

comment: The Department objects to the quotation of part of the Platform Statement out of context.

6. Page 8, Part IV: In each of the five objectives, the word "should" is to be replaced by the word "must"

comment: This change will indicate that these five objectives, weakly stated as they are, must be satisfied if an acceptable treaty is to result from the Conference.

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Derivative from State Memorandum dated Nov 11, 1981

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17 November 1981

Attachment II: Commentary on Interdepartmental Group Memorandum
No. 8, date 11/10/81: Policy Study: Law of the Sea

1. In general, changes should be made in the Memorandum to conform to the changes suggested in Attachment I, on the Draft Memorandum to the President; such conforming changes are need on pages 6, 7, 8, 18, 19, 25, 26.
2. Page 18, line 6, first full paragraph: add "adequate" between "satisfied and" and "progress".
3. Page 27, item 3 of IV. A. Add at end of item "after the conclusion of the conference.
4. Page 28: the language of the paragraphs giving the "extreme" cases should conform to the language on page 7 and in the Draft Memorandum to the President.
5. Implementation of Option 2: The Department considers that the statement of implementation, particularly in paragraphs 2 and 4 of this section indicate too strong a dependence upon the positions of the developing countries in the development of opening and fall-back positions and negotiating strategy..
6. Page 9, line 16: The Department is not persuaded on the efficacy of interpretive statements in curing the ills of the multitude of ambiguities in the text, including those concerned with national security, as noted in this line.

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